

11755-~~F~~
RECORDATION NO. 11755-~~F~~ Filed 1425

APR 30 1980 - 3 00 PM

INTERSTATE COMMERCE COMMISSION

11755-C
RECORDATION NO. 11755-C Filed 1425

APR 30 1980 - 3 00 PM

INTERSTATE COMMERCE COMMISSION
COUNSELORS AT LAW

11755
RECORDATION NO. 11755 Filed 1425

APR 30 1980 - 3 00 PM

INTERSTATE COMMERCE COMMISSION

11755-F
HAROLD GREENBERG
STEPHEN IRWIN
STUART M. PELLMAN
MELVIN S. SLADE
FREDERICK R. BISHOP
JOHN F. TRIGGS
ELLIOTT D. HECHT
J. ANDREW RAHL, JR.
SIDNEY M. SEGALL
MICHAEL W. STAMM
AMY SHEERR KAPLAN

APR 30 1980 - 3 00 PM

INTERSTATE COMMERCE COMMISSION

RECORDATION NO. 11755-F Filed 1425

APR 30 1980 - 3 00 PM

11755-A
RECORDATION NO. 11755-A Filed 1425

APR 30 1980 - 3 00 PM

INTERSTATE COMMERCE COMMISSION

APR 30 1980

Date

Fee \$ 206.06

RECORDATION NO. 11755-A Filed 1425
540 MADISON AVENUE
NEW YORK, N. Y. 10022
TEL: (212) 838-6670
TWX: 7105815043
CABLE: "GLEEWIN"

APR 30 1980 - 3 00 PM

INTERSTATE COMMERCE COMMISSION

April 29, 1980

RECORDATION NO. 11755-B Filed 1425

APR 30 1980 - 3 00 PM

INTERSTATE COMMERCE COMMISSION

Office of the Secretary
Recordation Office
Interstate Commerce Commission
Twelfth St. and Constitution Ave., N.W.
Washington, D.C. 20423 O'Neil

11755-A

Re: Recordation and Filing of Documents pertaining
to 120 Railroad Gondola Cars Numbered SB 6100
through SB 6149, inclusive, and PBR 5000 through
PBR 5069, inclusive

Dear Sirs:

In accordance with the provisions of Section 11303 of the Revised Interstate Commerce Act, 49 U.S.C. §11303, and Part 1116 of Title 49 of the Code of Federal Regulations, we request that the enclosed documents be recorded and filed by the Interstate Commerce Commission (the "Commission").

A. Description of the Documents and the Parties Thereto

Enclosed herewith are two originals of the documents listed below. We request that one original of each document be recorded and filed in the order listed below. We request that the additional original be stamped by your office and returned to us.

1. EQUIPMENT LEASE AGREEMENT (the "Lease"), dated as of April 28, 1980, between McDonnell Douglas Finance Corporation, as lessor (the "Lessor"), and Emons Industries, Inc., as lessee (the "Lessee");
2. INDIVIDUAL EQUIPMENT RECORD TO THE LEASE, dated as of April 28, 1980, between the Lessor and Lessee;
3. LEASE ADDENDUM NO. 1 TO THE LEASE, dated April 28, 1980, between the Lessor and Lessee;

Dated H. Cox
D. D. D. D. D.

RECEIVED
APR 30 2 52 PM '80
I.C.C. OPERATION BR.

Recordation Office
Interstate Commerce Commission

April 29, 1980
Page Two

~~4~~ 4. GONDOLA CAR AGREEMENT NO. 3, dated September 7, 1979, between the Lessee and South Buffalo Railway Company ("South Buffalo");

~~5~~ 5. SUPPLEMENT NO. 1 dated April 23, 1980, to Goldola Car Agreement No. 3, between the Lessee and South Buffalo;

~~6~~ 6. ASSIGNMENT OF GONDOLA CAR AGREEMENT AND CONSENT AND AGREEMENT, dated as of April 28, 1980, among the Lessor, the Lessee and South Buffalo;

~~7~~ 7. GONDOLA CAR AGREEMENT NO. 1, dated September 7, 1979, between the Lessee and Patapsco & Back Rivers Railroad Company ("Patapsco");

~~8~~ 8. SUPPLEMENT AND AMENDMENT NO. 1, dated April 23, 1980, to Gondola Car Agreement No. 1 between the Lessee and Patapsco; and

~~9~~ 9. ASSIGNMENT OF GONDOLA CAR AGREEMENT AND CONSENT AND AGREEMENT, dated April 28, 1980, among the Lessor, the Lessee and Patapsco.

The names and addresses for the parties to the transaction are:

EMONS INDUSTRIES, INC.
490 East Market Street
York, Pennsylvania 17403

McDONNELL DOUGLAS FINANCE CORPORATION
3855 Lakewood Boulevard
Long Beach, California 90846

SOUTH BUFFALO RAILWAY COMPANY
1275 Daly Avenue
Bethlehem, Pennsylvania 18015

PATAPSCO & BACK RIVERS RAILROAD COMPANY
1275 Daly Avenue
Bethlehem, Pennsylvania 18015

Recordation Office
Interstate Commerce Commission

April 29, 1980
Page Three

B. Procedural Matters

It is hereby respectfully requested that each of the following names be inserted in the Commission Index established pursuant to Section 1116.5(c) of Title 49 of the Code of Federal Regulations.

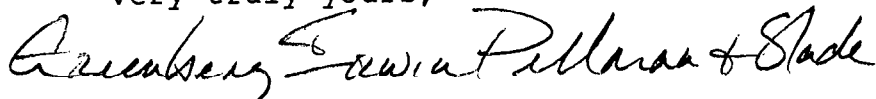
1. McDonnell Douglas Finance Corporation
2. Emons Industries, Inc.
3. South Buffalo Railway Company
4. Patapsco & Back Rivers Railroad Company

A check in the amount of \$210 has been enclosed with this letter of transmittal to cover the recordation fee.

Please stamp and return the enclosed copy of this letter of transmittal.

If there are any questions with respect to the enclosed or the transactons described therein, please telephone Melvin S. Slade or Michael W. Stamm of this office, collect.

Very truly yours,



GREENBERG IRWIN PELLMAN & SLADE

LEASE ADDENDUM NO. 1

APR 30 1980 - 3 01 PM

INTERSTATE COMMERCE COMMISSION
In connection with that certain Lease Agreement dated as of April 28, 1980, (the "Lease") between McDonnell Douglas Finance Corp. as Lessor (the "Lessor") and Emons Industries, Inc.

as Lessee (the "Lessee") covering certain items of equipment ("Equipment") more fully described in the Individual Equipment Records ("IER") identified as Exhibit "A" thereto, it is agreed that, upon execution by the parties hereto, this Lease Addendum shall constitute a part of said Lease.

If for any taxable year of Lessor (or portion thereof) during which the Lease is in effect, Lessor (such term for the purpose of this Lease Addendum meaning Lessor and the corporations with which Lessor consolidates its United States federal income tax returns) shall (i) lose any portion of the full 10% investment tax credit allowed by Section 38 of the Internal Revenue Code of 1954 as amended to the date hereof (the "Code") for "new Section 38 property" with respect to the purchase price paid by Lessor for any item of Equipment (or, except as provided in clause (c) of this paragraph, would lose such portion but for Lessor's failure to have sufficient liability for tax within the meaning of Section 46 of the Code against which to credit such portion for the taxable year of Lessor in which such item of Equipment is placed in service), and/or (ii) lose the benefit of a depreciation deduction with respect to the purchase price paid by Lessor for any item of Equipment using the Class Life Depreciation Range System prescribed by Section 167(m) of the Code and Treasury Regulations 1.167(a)-11 and depreciating the Equipment over a period equal to 12 years to a net salvage value of 0 % of the purchase price of such item of Equipment and not less than 12 months of depreciation will be allowable to the Lessor with respect to the equipment for the taxable year ending December 31, 1980, computed initially under the double-declining balance method of depreciation provided in Section 167(b)(2) of the Code and then switching to the sum-of-the-years' digits method of depreciation provided by Section 167(b)(3) of the Code (or, except as provided in clause (c) of this paragraph, would lose the benefit of such deduction if Lessor had sufficient gross income in the taxable year of the loss of such deduction against which to apply such deduction), as a result of any act, failure to act, omission or breach or inaccuracy of any representation or statement by Lessee of any nature whatsoever the Lessee shall pay the Lessor (1) a sum which, after deduction of all taxes required to be paid by the Lessor in respect of the receipt of such sum under the laws of any Federal, state or local government or taxing authority in the United States, shall be equal to the amount of investment tax credit so lost (or which would have been lost had Lessor had sufficient liability for tax within the meaning of Section 46 of the Code), (2) the amount of any interest and the amount of any penalties or additions to tax which may be payable to

the United States Government by Lessor in connection with the loss of such investment tax credit, (3) with respect to each taxable year for which Lessor shall lose the benefit of a depreciation deduction indemnified against by Lessee hereunder, a sum which, after deduction of all taxes required to be paid by Lessor in respect of the receipt of such sum under the laws of any Federal, state, or local government or taxing authority in the United States shall be equal to the amount of any additional Federal income taxes required to be paid with respect to such year (or which would have been required to be paid by Lessor for such year had it had sufficient gross income within the meaning of Section 61 of the Code to actually derive the benefit of such depreciation deduction) by reason of such loss of depreciation deduction (net of any savings in Federal income taxes realized by Lessor by reason of Lessor not being required to include in its Federal gross income for the relevant period the full amount of rent paid by Lessee for such period) and (4) the amount of interest, penalties and additions to tax (including any additions to tax because of underpayment of estimated tax) which may be payable by Lessor to the United States Government in connection with the loss of such depreciation deduction, provided that the Lessee shall not be required to make any of the foregoing indemnity payments to the extent the loss of the investment tax credit and/or depreciation deduction is the direct result of: (a) any event whereby Lessee is required by the terms of the Lease to pay, and shall have paid in full the Stipulated Loss Value for such item of Equipment; (b) at any time while no Event of Default is continuing Lessor shall voluntarily transfer legal title in such Equipment to a third party; (c) the failure of Lessor to have sufficient liability for tax within the meaning of Section 46 of the Code against which to credit such investment tax credit for such item of Equipment or to have sufficient gross income within the meaning of Section 61 of the Code against which to apply such depreciation deduction (but only if and to the extent that such investment tax credit or depreciation deduction would not be lost if Lessor had sufficient liability for tax or sufficient gross income); and (d) the failure of Lessor to claim the investment tax credit and/or depreciation deduction in its income tax returns for the appropriate year or to follow proper procedure in claiming such investment tax credit and/or depreciation deduction in such tax returns for such year, if such failure to claim or follow proper procedure shall preclude Lessor from claiming the investment tax credit and/or depreciation.

Except as otherwise provided in the immediately following paragraph, the liability of the Lessee to make any indemnity payments hereunder shall become fixed at the time Lessor makes payment of the tax attributable to the portion of the investment tax credit or depreciation deduction lost, or if Lessor is not required to make payment of tax with respect to the portion of the investment tax credit or deduction lost, the date on which Lessor files its tax return for the taxable year in which such loss occurs, and shall be due and payable within 15 days after receipt by Lessee of written notice from Lessor as to the fixing of such liability.

Lessee shall pay interest at the Agreed Rate (as that term is defined in the Lease) on any indemnity payment not made when due.

In the event a claim shall be made by the Internal Revenue Service which, if successful, would result in the loss of the investment tax credit or depreciation deduction under circumstances which would require the Lessee to indemnify the Lessor for such loss, the Lessor hereby agrees to take such action in connection with contesting such claim as the Lessee shall reasonably request in writing, provided that: (i) within 30 days after written notice of such claim by Lessor, the Lessee shall request that such claim be contested; (ii) Lessor, at its option, may forego any and all administrative appeals, proceedings, and conferences with the Internal Revenue Service and may, at its sole option, either pay the tax claimed and sue for a refund in the appropriate forum selected by Lessor or contest such claim in the United States Tax Court, considering however, in good faith such request as the Lessee shall make concerning the appropriate forum in which to proceed; (iii) prior to taking such action, the Lessee shall have furnished the Lessor with an opinion of independent tax counsel, satisfactory to Lessor, to the effect that a meritorious defense exists to such claim; (iv) Lessee shall have indemnified Lessor in a manner reasonably satisfactory to it for any liability, loss, or expenses which Lessor may incur as the result of contesting such claim, and (v) in the event Lessor shall pay the tax claimed and then seek a refund and the final determination of such claim shall be adverse to Lessor, Lessee shall pay Lessor interest at the rate of 10% per annum on the amount of the tax paid attributable to the portion of the investment tax credit or depreciation deduction lost, computed from the date of payment of such tax to the date Lessee shall reimburse Lessor for the payment of such tax. In the case of any such claim by the Internal Revenue Service referred to above, Lessor agrees to promptly notify the Lessee in writing of such claim and agrees not to make payment of the tax claimed for at least 30 days after the giving of such notice and agrees to cooperate with Lessee in good faith in order to contest effectively any such claim. If any such claim shall be made by the Internal Revenue Service and Lessee shall have reasonably requested Lessor to contest such claim and shall have duly complied with all provisions of this paragraph, the Lessee's liability with respect to the investment tax credit or depreciation deduction lost as a consequence of such claim shall become fixed upon final determination of the liability of Lessor for the tax claimed and after giving effect to any refund obtained; but in all other cases the liability of Lessee shall become fixed and payable as provided in the immediate preceding paragraph.

The indemnification provided herein shall survive the expiration or other termination of the Lease.

Dated as of April 28 ,1980

Seal:

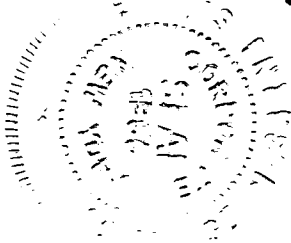
Lessor: MCDONNELL DOUGLAS FINANCE CORP.

By: *W. D. Black*
Its: *Vice Pres*

Seal:

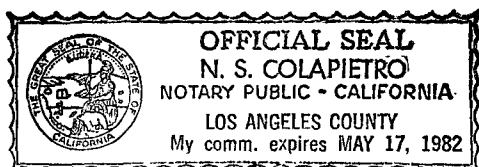
Lessee: EMONS INDUSTRIES, INC.

By: *Robert Grossman*
Its: *Chairman of the Board*



STATE OF CALIFORNIA)
) SS
COUNTY OF LOS ANGELES)

On this 25TH day of April, 1980, before me personally appeared Don V. Black, to me personally known, who, being by me duly sworn, says that he is Vice-President, Commercial and Industrial Financing of McDonnell Douglas Finance Corporation that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.



N. S. Colapietro
Notary Public

(Notarial Seal)

My Commission expires MAY 17, 1982

STATE OF *Pa.*
COUNTY OF *York*) SS

On this *24th* day of *April*, 1980, before me personally appeared *Robert Grossman*, to me personally known, who, being by me duly sworn, says that he is *Chairman of the Board* of *Enron Industries, Inc.*, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Judge H. H. H. H.
Notary Public

(Notarial Seal)

MY COMMISSION EXPIRES


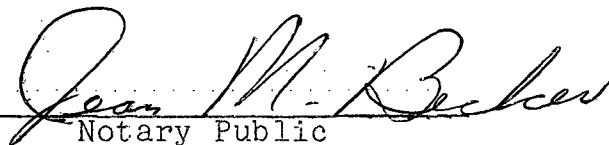
JANUARY 31, 1981

YORK, YORK COUNTY, PA.

My Commission expires

COMMONWEALTH OF PENNSYLVANIA :
:
COUNTY OF NORTHAMPTON :

On this 24th day of April, 1980, before me personally appeared Howard J. Umberger, to me personally known, who, being by me duly sworn, says that he is the Vice President of PATAPSCO & BACK RIVERS RAILROAD COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed on behalf of said corporation by authority of the By-laws of said corporation, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

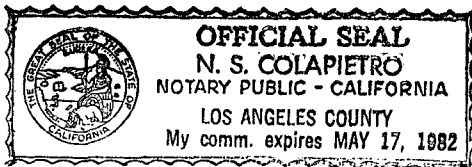


Notary Public

STATE OF CALIFORNIA)

) SS

COUNTY OF LOS ANGELES)

On this 25TH day of April, 1980, before me personally appeared Don V. Black, to me personally known, who, being by me duly sworn, says that he is Vice-President, Commercial and Industrial Financing of McDonnell Douglas Finance Corporation that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.



N. S. Colapietro

Notary Public

(Notarial Seal)

My Commission expires MAY 17, 1982

STATE OF *Pa*)
COUNTY OF *York*) SS

On this *29th* day of *April*, 1980, before me personally
appeared *Robert Grossman*, to me personally known, who, being
by me duly sworn, says that he

is *Chairman of the Board*
of *Emond Industries, Inc.*

, that one of

the seals affixed to the foregoing instrument is the corporate
seal of said corporation, that said instrument was signed and
sealed on behalf of said corporation by authority of its Board

of Directors and he acknowledged that the execution of the
foregoing instrument was the free act and deed of said
corporation.

Judge Horvath

Notary Public

(Notarial Seal)

My Commission expires

MY COMMISSION EXPIRES
JANUARY 31, 1981
YORK, YORK COUNTY, PA